IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1532 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.S.SHAH
AND
HONOURABLE MR.JUSTICE K.M.MEHTA

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge?

==========

SURPAL VESTABHAI BHABOR - Appellant(s)
Versus
MUSABHAI AHMEDBHAI KANUGA & 1 - Defendant(s)

==========

Appearance :
MR NIRAL R MEHTA for Appellant(s) : 1,
NOTICE SERVED for Defendant(s) : 1,
MR MAHENDRA U VORA for Defendant(s) : 1,
MS.VASUVDATTA BHATT for Respondent(s) : 2,

==========

CORAM : HONOURABLE MR.JUSTICE M.S.SHAH

and

HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 18/09/2006

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE M.S.SHAH)

This appeal is directed against the judgment and award dated 9th February 2006 passed by Motor Accident Claims Tribunal, Dahod, in M.A.C.P. No.1510 of 2006 (Old No.506 of 1996), by which the Tribunal has awarded compensation of only Rs.45,000/- with proportionate costs and interest at the rate of 9% p.a. from the date of petition till its realisation on account of serious injuries sustained by appellant – original claimant in motor accident involving the bus driven by respondent No.1 and belonging to respondent No.2 – Gujarat State Road Transport Corporation.

2. Looking to the fact that inspite of serious injuries resulting into amputation of left leg and looking to the meagre amount awarded by the Tribunal, while issuing notice on 1st August 2006, we made it clear that the notice was being issued for final disposal and accordingly the matter has reached final hearing today.

3. The Appeal has been heard for final disposal and is being disposed of by this Judgment after hearing the learned counsel for the appellant as well as learned counsel for the respondent No.2 – S.T. Corporation.

4. On 25th February 1996, when the appellant was waiting for a bus at Limbdi Bus Station of the respondent Corporation, the bus in question knocked

down the appellant and the wheel of the said bus ran over the left leg of the appellant. The appellant was removed to Civil Hospital, Godhra, where he was operated and his left leg had to be amputated from below the knee. He filed claim petition for compensation of Rs.3,74,700/- against the bus driver and the respondent Corporation. The Tribunal held that the accident was caused by rash and negligent driving of bus driver.

5. Coming to the question of quantum of compensation, after referring to the evidence and the arguments, all that the Tribunal has done by way of discussion is to be found in para 9 of the judgment which reads as under :-

> "9. In my opinion, applicant is entitled for following compensation :-
>
> | | | |
> |---|---|---|
> | 1. | Mental pain, shock and suffering | Rs.25,000/- |
> | 2. | Loss of future income | Rs.10,000/- |
> | 3. | For medical expenses, transport charges etc. | Rs.10,000/- |
> | | Total: | Rs.45,000/- |
>
> Therefore, opponents are liable to pay compensation to the applicant. Hence my reply to the issue no. 2 & 3 shall be accordingly."

It is against the aforesaid judgment and award that the appellant has preferred this appeal.

6. We are shocked to find that the Tribunal has

not at all applied its mind to the serious injuries suffered by the claimant resulting into amputation of the left leg. We are also shocked to notice that after quoting the affidavit at Exh.22 in para 7 of the judgment and after recording the arguments of the learned advocate for the S.T. Corporation in para 8, the Tribunal has straightaway recorded its findings in para 9 of the judgment, which is already quoted hereinabove. The Tribunal has been constituted under the provisions of Motor Vehicles Act, 1988 for awarding just compensation to the victims who have suffered serious injuries in motor vehicle accidents or to the heirs of the persons who have died in motor vehicle accidents. Apart from the fact that the judgment under appeal is contrary to settled legal principles, there is no discussion whatsoever as to why the Tribunal has assessed compensation for loss of future income at only Rs.10,000/-.

7. The claimant had examined Dr. B.S. Agrawal, who filed his affidavit at Exhibit 25. Dr. B.S. Agrawal issued disability certificate on 16th December 1997 and stated that the claimant can not do labour work and agriculture work and that he can not walk without support. In spite of the aforesaid certificate and in spite of the fact that the evidence given by Dr. B.S. Agrawal was not seriously challenged in cross-examination, the Tribunal has not at all discussed as to what was the disability suffered by the claimant, what assessment was being made by the Tribunal for loss of earning capacity

every month/year and as to what was the multiplier being adopted by the Tribunal. The Tribunal awarded the amount towards future loss of income at Rs.10,000/- in a case where there is amputation of a leg and the claimant can not do any labour work or agriculture work.

8. Mr. Nirav Mehta, learned advocate for the appellant has submitted that the appellant's income should be assessed at Rs.3,000/- per month and on that basis, the appellant is entitled to the award of compensation for loss of future income and is also entitled to RS.1,00,000/- for pain, shock and suffering and loss of amenities of life.

9. On the other hand, Mrs. Vasavdatta Bhatt, learned counsel for the S.T. Corporation has submitted that in absence of any documentary evidence about the income of the claimant, the Tribunal was justified in not awarding any higher amount of compensation.

10. Having heard the learned counsel for the parties, we are of the view that when the legislature has provided for a statutory presumption that even in case of non earning persons like minor children, notional income should be assessed at Rs.15,000/- per annum, in case of agricultural labourer even in Dahod District, which is backward District, the income of the claimant has to be assessed at Rs.18,000/- per annum. After hearing the arguments, we find that on

account of amputation of the left leg of an agricultural labourer resulting into serious handicapped, such a claimant will not be able to do any labour work. According to the evidence of Dr. Agrawal, the claimant can not do any labour work and the disability has been assessed at 60%. After going through that assessment, we are of the view that the appellant/claimant has suffered permanent partial disablement to the extent of 60%, which would reduce the claimant's income by Rs.10,800/- p.a. Since the claimant was 40 years of age on the date of accident, we consider it proper to rely upon the multiplier in the Second Schedule to the Act, which is 16 years. Accordingly, the compensation for loss of future income would work out to Rs.1,72,800/-.

11. Coming to the question of compensation for pain, shock and suffering and loss of amenities of life, we are of the view that the assessment of compensation by the Tribunal on this score at Rs.25,000/- is also on the lower side. The wheel of the S.T. Bus ran over and crushed the left leg of the appellant and on account of amputation, the claimant is not able to do any labour work and agriculture work. Of course, with artificial leg, the claimant can do work, but pain, shock and suffering and trauma would continue for the rest of life and the claimant would not enjoy various amenities of life. Hence, we are of the view that the compensation for pain, shock and suffering and for loss of amenities of life ought to be assessed at Rs.50,000/-.

12. At this stage, Mr. Mehta has also pointed out that the compensation being awarded to the claimant is going to be one time award and for artificial leg/replacement of leg, the claimant would not be able to go to the Tribunal again. Hence, Rs.1,00,000/- should be awarded and the said amount should be invested and the interest will be utilised for replacement of such artificial leg.

13. Having heard the learned counsel for the parties, we find considerable substance in the submissions made by Mr. Mehta for the appellant. In para 28 of the judgment in Nagappa Vs. Gurudayal Singh (2003) 2 Supreme Court Cases 274, the Apex Court has laid down the following principles:-

> "In this view of the matter, in our view, it would be difficult to hold that for future medical expenses which are required to be incurred by a victim, fresh award could be passed. However, for such medical treatment the court has to arrive at reasonable estimate on the basis of the evidence brought on record. In the present case, it has been pointed out that for replacing the artificial leg every two to three years, the appellant would be required to have some sort of operation and also change the artificial leg. At that time, the estimated expenses for this were Rs.18,000 and the High Court has awarded the said amount. For change of the artificial leg every two or three years no compensation is awarded. Considering this aspect, if Rs. One lakh is awarded as an additional compensation, the appellant would be in a position to meet the said expenses from the interest of the said amount.

In view of the above, Rs.1,00,000/- has to be awarded as the amount which will be invested in fixed deposit and the interest accruing on the said deposit, will be utilized by the claimant for replacement of artificial leg.

14. The Tribunal has also awarded Rs.10,000/- towards the medical expenses, transportation charges. Adding the said amounts, the total amount would work out to Rs.3,32,800/- as under :-

1.For future loss of income	Rs.1,72,800-00
2.For pain, shock and suffering and loss of amenities of life	Rs. 50,000-00
3.For replacement of artificial leg and medical expenses in future	Rs.1,00,000-00
4.For medical expenses and transportation charges	Rs. 10,000-00
	Rs.3,32,800-00

15. In view of the above discussion, the First Appeal is allowed. The respondents are held to be jointly and severally liable to pay the compensation of Rs.3,32,800-00 (Rupees three lakhs thirty two thousand eight hundred only) with proportionate costs and interest at the rate of 9% p.a. from the date of the claim petition till realization. The amount, if

any, paid to the appellant – claimant under Section 140 of the Motor Vehicle Act, 1988, shall be adjusted against the aforesaid amount of compensation.

Respondent No.2 is accordingly directed to deposit differential amount of Rs.2,87,800-00 with proportionate costs and interest on the aforesaid differential amount before the Tribunal within three months from the date of receipt of a certified copy of the judgment.

16. A copy of this judgment shall be sent to the learned Administrative Judge in charge of the Tribunal and also to the Presiding Officer of the Tribunal who rendered the judgment challenged in this appeal.

Direct service is permitted.

(M. S. SHAH, J.)

(K. M. MEHTA, J.)

ynvyas